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*** CURRENT THROUGH D.C. LAW 18-39, EFFECTIVE JULY 18, 2009 ***
*** AND THROUGH D.C. ACT 18-129 ***
*** STATE ANNOTATIONS CURRENT THROUGH APRIL 27, 2009 ***

TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 5. ADMINISTRATIVE PROCEDURE
SUBCHAPTER I. ADMINISTRATIVE PROCEDURE

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 2-510 (2009)

§ 2-510. Judicial review [Formerly § 1-1510]

(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold. The reviewing Court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms. The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

(1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) To compel agency action unlawfully withheld or unreasonably delayed; and

(3) To hold unlawful and set aside any action or findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;

(D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or

(E) Unsupported by substantial evidence in the record of the proceedings before the Court.

(b) In reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error.

HISTORY: Oct. 21, 1968, *82 Stat. 1209,* Pub. L. 90-614, § 11; July 29, 1970, *84 Stat. 582,* Pub. L. 91-358, title I, § 162; 1973 Ed., § 1-1510; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(ll), 22 DCR 2055; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b; 1981 Ed., § 1-1510.

NOTES: SECTION REFERENCES. --This section is referenced in *§ 2-1403.14*, *§ 2-1831.16*, *§ 3-410*, *§ 3-511*, *§ 3-606*, *§ 3-1205.20*, *§ 4-803*, *§ 7-2045*, *§ 8-113.10*, *§ 8-1021*, *§ 11-722*, *§ 17-303*, *§ 17-305*, *§ 26-704*, *§ 26-706.01*, *§ 26-1204*, *§ 26-1205*, *§ 28-3905*, *§ 31-714*, *§ 31-903*, *§ 31-2103*, *§ 31-2231.23*, *§ 31-2231.24*, *§ 31-2403*, *§ 31-3153*, *§ 31-3931.20*, *§ 31-5507*, *§ 31-5608.03*, *§ 32-414*, *§ 32-509*, *§ 32-756*, *§ 32-1116*, *§ 32-1117*, *§ 32-1204*, *§ 34-2305*, *§ 41-127*, *§ 42-3405.08*, *§ 42-3405.09*, *§ 44-414*, *§ 44-607*, *§ 44-1003.13*, *§ 46-225.01*, *§ 46-226.03*, *§ 46-226.06*, *§ 47-2853.23*, *§ 48-108.01*, *§ 50-1907*, and *§ 50-2304.05*.

LEGISLATIVE HISTORY OF LAW 1-19. --See note to *§ 2-501*.

LEGISLATIVE HISTORY OF LAW 1-96. --See note to *§ 2-531*.

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Administrative Procedures

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CONSTRUCTION.

On review by the District of Columbia Court of Appeals, the court must determine: (1) whether the agency made a finding of fact on each material contested issue of fact; (2) whether substantial evidence in the record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).*

Review by the District of Columbia Court of Appeals of the factual determinations of the District of Columbia Board of Zoning Adjustment is deferential: the court must affirm the Board's factual findings if they are based on substantial

evidence in the record as a whole, and the conclusions of the Board of Zoning Adjustment must be sustained unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).*

CONTESTED CASE.

Due process required that a tenant facing permanent ineligibility for the tenant assistance program because of fraud allegations be provided a full hearing; therefore, a decision against the tenant was a decision in a contested case, and the District of Columbia Court of Appeals had jurisdiction to review the decision. *Powell v. D.C. Hous. Auth., 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).*

Because this chapter contemplates exclusive jurisdiction in the Court of Appeals over review of administrative proceedings involving contested cases, the Superior Court acted properly in declining to entertain appellants' claims concerning proposed merger involving hospital service provider. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).*

Because bid protests are not contested cases and thus cannot be appealed directly to the Court of Appeals, the trial court erred in holding that it lacked subject matter jurisdiction to hear the case. *Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).*

An extension of a planned unit development (PUD) order was simply a post-hearing aspect of a contested case involving the PUD hearing, and there was no reason to separate it from the original contested case for jurisdictional purposes. *Hotel Tabard Inn v. District of Columbia Zoning Comm'n, App. D.C., 661 A.2d 150 (1995).*

Court lacked jurisdiction to review decision of Foreign Missions Board of Zoning Adjustment concerning an application by a foreign instrumentality for location of chancery facility, because decision was not a contested case within the meaning of the *Administrative Procedure Act. United States v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 644 A.2d 995 (1994).*

DECISION NOT UPHELD.

Former employee, who was undergoing a complicated pregnancy, was not entitled to receive unemployment benefits under *D.C. Code § 51-110(a)* because the employee failed to establish that the employee's cause for leaving was connected with the employee's work as the employee did not provide the employer with any updated medical documentation, as required by *D.C. Mun. Regs. tit. 7, § 311.7(e)*, indicating that the employee's pregnancy was aggravated by the employee's continuing to adhere to the modified work arrangements that the employer put in place for the employee after a previous medical notice was given to the employer specifying the need to assign the employee to light duty during the employee's pregnancy. *Chimes District of Columbia, Inc. v. King, 966 A.2d 865, 2009 D.C. App. LEXIS 44 (2009).*

Administrative law judge's decision to preclude a claims examiner, who disqualified a claimant from receiving unemployment benefits, from testifying at the claimant's review hearing was not supported by substantial evidence under *D.C. Code § 2-510(a)(3)(E)*, nor was it in accordance with the law under *D.C. Code § 2-510(a)(3)(A). D.C. Dep't of Empl. Servs. v. Vilche, 934 A.2d 356, 2007 D.C. App. LEXIS 556 (2007).*

Reversal and remand of a decision to deny disability benefits and payment of medical expenses was necessary because, while the presumption of a medical causal relationship was rebutted concerning an employee's exposure to mold at work, the District of Columbia Department of Employment Services failed to consider possible alternative work-related causes of the adverse symptoms regarding the employee's disability claim, and also made no finding as to whether the employee was able to return to her work during the period in issue. *Young v. D.C. Dep't of Empl. Servs., 918 A.2d 427, 2007 D.C. App. LEXIS 108 (2007).*

Denial of a workers' compensation claim was improper because the denial did not address the presumption of compensability that arose from an incident, in which an employee was struck by one of his employer's buses, as an administrative law judge (ALJ) found it occurred, and the ALJ's finding that the employer's evidence overcame the statutory presumption of compensability under *D.C. Code § 32-1521(1)* was not in accordance with the law. *McNeal v. D.C. Dep't of Empl. Servs., 917 A.2d 652, 2007 D.C. App. LEXIS 82 (2007).*

Although the District of Columbia Department of Employment Services Compensation Order Review Board's suspension of an employee's temporary total disability workers' compensation benefits under *D.C. Code § 32-1507(d)* for her unreasonable refusal to participate in vocational rehabilitation was neither unreasonable nor contrary to law, in light of the remedial intent under the District of Columbia Workers' Compensation Act of 1979, as amended, *D.C. Code § 32-1501* et seq., to give substantial protection against interruption of income, and in light of both parties' reference to post-administrative-hearing activities on the issue of cure, the Board erred in not considering whether to remand for further

administrative proceedings the issue of the employee's cure of her refusal to cooperate. *Darden v. D.C. Dep't of Emple. Servs., 911 A.2d 410, 2006 D.C. App. LEXIS 624 (2006).*

Rental Housing Commission abused its discretion in holding that a landlord's failure to give proper notice as to the authority on which it was instituting a rent increase that fell well within its rent ceiling invalidated the increase where the tenant had never even raised that issue in a manner that would have allowed the landlord to defend against it, and in imposing a fine for failing to provide a two-day rent rebate for failure to provide adequate heating in the absence of any showing of willfulness. *Parreco v. D.C. Rental Hous. Comm'n, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).*

License revocation did not flow rationally from record facts rooted in "substantial evidence," as required under *§ 2-510(a)(3)(E)*, because it was based primarily on the complaining patient's sworn deposition, which amounted to disputed hearsay evidence; without more, the Board could not substantially rely on the deposition to support its decision to revoke the doctor's license. *Compton v. D.C. Bd. of Psychology, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).*

Although a university waived its right to assert on appeal that the District of Columbia Board of Zoning Appeals exceeded its authority to grant special exceptions pursuant to *D.C. Code § 6-641.01* et seq. when it imposed an enrollment cap on a university's campus plan, the issue was considered on appeal because the Board made no evidentiary findings of a basic or underlying nature even though it was required to do so. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003).*

In a workers' compensation proceeding, a 32% permanent partial disability rating assigned by the director of the District of Columbia Department of Employment Services, in contravention of a 5% rating assigned by the administrative law judge (ALJ), was reversed because it was based on a medical opinion that the ALJ, as the trier of fact, had explicitly rejected. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).*

Director of the District of Columbia Department of Employment Services exceeded his permissible scope of review by disregarding an administrative laws judge's credibility determination, crediting an independent medical examiner over the workers' compensation claimant's treating physician to come to his own conclusion, and so was reversed under *§§ 2-510(a)(3)* and *32-1522(b)(3). Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).*

Housing authority's failure to make any findings of fact, from which a reviewing court could determine whether allegations of tenant fraud were supported by substantial evidence, required reversal of its decision. *Powell v. D.C. Hous. Auth., 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).*

Because a hearing examiner's conclusion in a contested workers' compensation case rested upon a questionably dated document completed by the employee's treating physician, making it appear that the employee suffered from stress and hypertension three years prior to the stipulated date of the injury, the hearing examiner's findings were not supported by substantial evidence. *Fontenot v. D.C. Dep't of Empl. Servs., 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).*

DECISION UPHELD.

Denial of workers' compensation benefits to a police sergeant was not arbitrary under *D.C. Code § 2-510(a)(3)(A)* as even taking the sergeant's affiliations with the Prince George's County, Maryland, Police Department into account, the sergeant, when accosted in Maryland, did not suffer injuries as a member of the District of Columbia Metropolitan Police Department while in the performance of the sergeant's duty as a police officer. *Smallwood v. D.C. Metro. Police Dep't, 956 A.2d 705, 2008 D.C. App. LEXIS 396 (2008).*

District of Columbia Department of Employment Services Compensation Order Review Board's suspension of an employee's temporary total disability workers' compensation benefits under *D.C. Code § 32-1507(d)* for her unreasonable refusal to participate in vocational rehabilitation was neither unreasonable nor contrary to law, because: (1) the progress notes of the employee's doctor did not indicate that the employee's physical incapacity went beyond the limitations recognized in the original compensation order; and (2) the opinion of the employee's doctor about whether the employee had the skills for light employment was not a medical opinion and was not entitled to deference or to special weight. *Darden v. D.C. Dep't of Emple. Servs., 911 A.2d 410, 2006 D.C. App. LEXIS 624 (2006).*

Conclusion by the Compensation Review Board (CRB) of the District of Columbia Department of Employment Services that an employer had received actual or constructive notice of an employee's current address was not arbitrary or capricious; moreover, when the employer's insurance carrier mailed a settlement payment to the employee's old address, the CRB did not abuse its discretion in imposing a 20 percent penalty under *D.C. Code § 32-1515(f)* and in declining to waive the employer's failure to make timely payment within the statutory 10-day period as something over which it had no control. *Hard Rock Cafe' v. D.C. Dep't of Empl. Servs., 911 A.2d 1217, 2006 D.C. App. LEXIS 623 (2006).*

The Contract Appeals Board of the District of Columbia had jurisdiction to decide a dispute between the Office of the District's Chief Financial Officer and a provider of business software that had sought to have its termination reclassified as having occurred in the interest of the District instead of for default; although certain functions of the Office had been

exempted from the Procurement Practices Act, those functions included specialized professional services contracts, not procurements. *Abadie v. D.C. Contract Appeals Bd., 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).*

Because the District of Columbia Alcoholic Beverage Control Board was presented with an abundance of testimony from neighbors, along with its own investigator's findings, that another license in the neighborhood would add to problems of loitering, public drinking, and over-concentration of licensed establishments, its denial of a Class B transfer application was amply supported by substantial evidence. *Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd., 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).*

Hearing examiner's refusal to reopen record was not an abuse of discretion where petitioners failed to demonstrate any unusual circumstances justifying such reopening, and where any relevant and material evidence in petitioners' possession could have reasonably been presented at the hearing. *Charles P. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).*

A decision of the zoning board approving a special exemption was upheld where the board properly considered and addressed all relevant factors. *French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).*

DELAY.

In a disciplinary proceeding by the District of Columbia Board of Medicine, delays in contravention of *§ 3-1205.19(h)*, while regrettable, did not merit reversal, particularly given the governmental interests at stake in professional disciplinary proceedings and the preferred remedy of an order compelling agency action. *Udebiuwa v. D.C. Bd. of Med., 818 A.2d 160, 2003 D.C. App. LEXIS 139 (2003).*

FINDINGS.

Substantial evidence supported the District of Columbia Public Utility Commission's approval of a 50-50 sharing of revenues from asset management fees between a utility and the ratepayers, but the Commission's conclusory statement was insufficient to support its approval of a 50-50 sharing arrangement regarding revenues from the development of a remediated site; the latter arrangement was not necessarily improper, but further fact finding would be required. *Office of the People's Counsel v. D.C. PSC, 845 A.2d 1128, 2004 D.C. App. LEXIS 64 (2004).*

Where the administrative record lacked substantial evidence to support the findings of the Office of Employee Appeals (OEA), the case was remanded with instructions that the OEA make specific findings of fact. *Murchison v. D.C. Dep't of Pub. Works, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).*

Intra-agency remand ordered by Department of Employment Services was not in clear excess or plain contravention of its statutory mandate, and therefore subsection (a) of this section did not confer jurisdiction on court to review what was in essence an interlocutory order, with a record devoid of factual findings which could be essential to outcome of case. *Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).*

Where the workers' compensation hearing examiner interpreted the applicable statutory provision but the director of the defendant agency did not, remand was required for adoption of findings of fact and conclusions of law and for determination of the sufficiency of the notice of injury. *Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196 (1997).*

Where the agency did not make a factual finding as to precisely when the claimant provided notice to his employer of his work-related injuries, but found that he was aware of the relationship and his employment more than 30 days prior to the provision of notice, there was no error in finding that an interrogatory admission did not constitute notice in compliance with the requirements of *§ 32-1513. Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997).*

The court must consider whether agency findings are supported by reliable, probative, and substantial evidence in the record, and whether the conclusions reached by the agency flow rationally from those findings. *Breen v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 659 A.2d 1257 (1995).*

In making the necessary findings, a Mayor's agent is not required to explain why he favored one witness' testimony over another, or one statistic over another. *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 655 A.2d 865 (1995).*

Agency must make findings on each material issue of fact, and factual findings must be supported by substantial evidence on the record as a whole; agency's conclusions must flow rationally from those findings and comport with applicable law. *Williamson v. District of Columbia Bd. of Dentistry, App. D.C., 647 A.2d 389 (1994).*

HARMLESS ERROR.

To the extent that agency failed to follow its regulations in providing required notices to petitioner, that failure was harmless and could not form the basis for reversal. *Robinson v. Smith, App. D.C., 683 A.2d 481 (1996).*

INFORMATION OUTSIDE OF RECORD.

Portions of agency's letter to hospital service provider sought to make substantive alterations to agency's previous decision and order concerning proposed merger, and since the letter was precipitated by ex parte contacts between agency and provider that were not made part of record or subject to adversarial attack, the court was unable to conduct an appropriate review of the agency's action; treating letter as a separate order, court was therefore required to vacate it. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).*

JURISDICTION.

District of Columbia Court of Appeals had jurisdiction to review a petition by the District of Columbia Department of Employment Services for review because, while the petition may have been filed prematurely, it became effective when an administrative law judge denied the Department's motion for reconsideration. *D.C. Dep't of Empl. Servs. v. Vilche, 934 A.2d 356, 2007 D.C. App. LEXIS 556 (2007).*

Pursuant to *D.C. Code § 29-617*, the District of Columbia Court of Appeals lacked jurisdiction to directly review an educational license renewal decision of the District of Columbia Education Licensure Commission under *D.C. Code § 2-510*, the judicial review provision of the District of Columbia Administrative Procedure Act, *D.C. Code § 2-501* et seq. Am. Univ. in *Dubai v. D.C. Educ. Licensure Comm'n, 930 A.2d 200, 2007 D.C. App. LEXIS 483 (2007).*

On Fifth Amendment due process challenges to former District of Columbia Comprehensive Merit Personnel Act of 1978 policies and procedures, where the United States Court of Appeals for the District of Columbia Circuit remanded a District of Columbia Administrative Procedure Act (APA) claim against defendant District of Columbia for reconsideration of the district court's decision to exercise supplemental jurisdiction over that claim, because only the appellate court could review an APA claim, supplemental jurisdiction on that claim was declined. *Lightfoot v. District of Columbia, -- F. Supp. 2d --, 2007 U.S. Dist. LEXIS 2858* (D.D.C. Jan. 16, 2007).

JUSTICIABLE CONTROVERSY.

Petition for review was dismissed because petitioner did not suffer a legal wrong, nor was petitioner adversely affected by order of Mayor's agent denying construction permits, since findings and conclusions by agent of which petitioner complained were beyond agent's statutory jurisdiction. *District Intown Properties, Ltd. v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 680 A.2d 1373 (1996).*

REMAND.

Case was remanded as a finding of fact was not made on an employee's retaliation claim as required by *D.C. Code § 2-510(a)(3)(E)* as a supervisor stated in an opportunity to demonstrate performance that one of the employee's problems stemmed from unsubstantiated claims of a hostile environment based on a potential decision to deny leave; the District of Columbia Office of Administrative Hearings had to determine whether the alleged retaliation occurred and whether the alleged retaliation constituted good cause connected with the work for the employee's resignation under *D.C. Code § 51-110(a)* and *D.C. Mun. Regs. tit. 7, § 311.1. Douglas-Slade v. United States DOT, 959 A.2d 698, 2008 D.C. App. LEXIS 426 (2008).*

REMEDIES.

Claimants' § 1983 action alleging Fourteenth Amendment due process violations by the District of Columbia's denial of disability compensation pursuant to the Comprehensive Merit Personnel System Act failed on summary judgment because the claimants failed to avail themselves of available state remedies under *D.C. Code § 2-510(a)* of the D.C. Administrative Procedure Act, *D.C. Code § 11-722*, and D.C. Ct. App. R. 21. The failure to seek state remedies was fatal to their claims under § 1983. *Windstead v. District of Columbia, 596 F. Supp. 2d 50, 2009 U.S. Dist. LEXIS 5381 (D.D.C. 2009).*

Two different bases for review of agency inaction have been recognized: first, a plaintiff can seek a writ of mandamus from the District of Columbia Court of Appeals (D.C. Ct. App. R. 21 provides a procedure for seeking a writ of mandamus against a District of Columbia official); second, a plaintiff may seek review in the District of Columbia Court of Appeals based on *D.C. Code §§ 2-510* and *§ 11-722*. Under *D.C. Code § 2-510(a)(2)*, a Court of Appeals can compel agency action unlawfully withheld or unreasonably delayed. *Medina v. District of Columbia, 517 F. Supp. 2d 272, 2007 U.S. Dist. LEXIS 40781 (D.D.C. 2007).*

STANDING.

Tenant's association lacked standing to challenge an order issued by the District of Columbia Zoning Commission that approved the university's request to construct a classroom and dorm facility near the tenants. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).*

STATUTORY CONSTRUCTION.

District of Columbia Court of Appeals owed no deference to an administrative agency when the agency interpreted and applied D.C. Super. Ct. R. Civ. P. 41 and D.C. Super. Ct. R. Civ. P. 52, because the agency had no special expertise in the matter of procedural court rules. *Dorchester House Assocs., Ltd. P'shp v. D.C. Rental Hous. Comm'n, 913 A.2d 1260, 2006 D.C. App. LEXIS 659 (2006).*

It is emphatically the province and duty of the judicial department to declare what the law is, and although the District of Columbia Court of Appeals accords weight to the agency's construction of the statutes which it administers, the ultimate responsibility for deciding questions of law is assigned to that court. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).*

Under *D.C. Code § 2-510*, the District of Columbia Court of Appeals defers on issues of statutory construction to an agency's interpretation unless it is plainly wrong or inconsistent with the legislative intent. *Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).*

SUBSTANTIAL COMPETENT EVIDENCE.

District of Columbia Board of Zoning Adjustment did not err by approving on remand a university's revised campus plan to cap the student enrollment because, pursuant to *D.C. Code § 2-510(a)*, substantial evidence supported the Board's findings and the Board's conclusions flowed rationally from those findings; however, because the Board's failure to provide an explanation for its decision to eliminate uncontested conditions on remand made it impossible to determine whether the decision was based on substantial evidence, the case was remanded to the Board to ascertain the basis for the exclusions. *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment, 925 A.2d 585, 2007 D.C. App. LEXIS 326 (2007).*

Restaurant operator's liquor license was revoked because substantial evidence supported the administrative finding that the establishment was used for an unlawful or disorderly purpose in violation of *D.C. Code § 25-823(2)*; substantial evidence also supported the request for revocation by the Chief of the Metropolitan Police Department under *D.C. Code § 25-827(a)*, based on a determination that there was a correlation between increased crime within 1,000 feet of the establishment and operation of the establishment. *Levelle, Inc. v. D.C. Alcoholic Bev. Control Bd., 924 A.2d 1030, 2007 D.C. App. LEXIS 259 (2007).*

Compensation Review Board of the District of Columbia erred, pursuant to *D.C. Code § 2-501* and *D.C. Code § 2-510* et seq., by limiting the former employee's award of workers' compensation benefits for medical problems and expenses resulting from employee's contact with certain chemical agents while she was employed by hospital employer, to a certain date, because there was no substantial evidence that claimant had fully recovered from all, as distinguished from most, of the medical problems resulting from her contact with certain chemical agents as of that date. *Caldwell v. D.C. Dep't of Empl. Servs., 916 A.2d 896, 2007 D.C. App. LEXIS 8 (2007).*

Three written counseling records submitted by employer in support of its contention that an employee was terminated for misconduct provided the substantial evidence necessary to support an administrative law judge's finding that the employee had been terminated for misconduct as well as the ALJ's finding that the employee had not engaged in "gross misconduct" as defined in *D.C. Mun. Regs. tit. 7, § 312.5*; thus, the ALJ correctly determined that the employee was ineligible for the first eight weeks of unemployment compensation she would have otherwise been able to collect. *Rodriguez v. Filene's Basement, Inc., 905 A.2d 177, 2006 D.C. App. LEXIS 429 (2006).*

Substantial competent evidence standard of review under the District of Columbia Government Comprehensive Merit Personnel Act (CMPA), *D.C. Code § 1-623.01* et seq., is nearly identical to the substantial evidence standard outlined in the District of Columbia Administrative Procedures Act (APA), specifically *D.C. Code §§ 2-509(e)* and *2-510(a)(3)(E)*; although the CMPA, specifically *D.C. Code § 1-623.24(b)(2)*, provides that the District of Columbia Department of Employment Services is not bound by the APA, because the CMPA explicitly provides for the same standard of review as found in the APA, the appellate court applied APA cases that expounded upon the substantial evidence standard in CMPA matters. *Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).*

TIMELINESS.

Petition of the District of Columbia Housing Authority (DCHA) challenging a District of Columbia Superior Court's decision that the DCHA violated the District of Columbia Human Rights Act by discriminating against appellant em-

ployee on the bases of age and national origin was held timely since it was filed within three years of the Superior Court's decision; whether or not *D.C. Code § 12-301(8)* applied to the case, no statute of limitations applied to actions brought by the D.C. government. *D.C. Hous. Auth. v. D.C. Office of Human Rights, 881 A.2d 600, 2005 D.C. App. LEXIS 459 (2005).*

Although a hospital did not appeal a workers' compensation decision for over three months after it was mailed, the hospital did not learn of the director's decision for more than two months after the decision was issued; consequently, pursuant to *D.C. Code §§ 32-1522(b)(3), 2-510(a)*, and D.C. Ct. App. R. 15(a)(2), the hospital's appeal was timely. *Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs., 881 A.2d 567, 2005 D.C. App. LEXIS 451 (2005).*

Time to seek judicial review of an order issued by the District of Columbia Zoning Commission started to run when the party received a copy of the Commission's order, not when the order was published in the *District of Columbia Register. York Apts. Tenants Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).*

TOLLING OF AGENCY ORDERS.

Because the unambiguous language of this section states that the filing of a petition for review "shall not" operate to stay the effect of an agency's order, where an intervenor failed to apply for a stay and also failed to seek a building permit within the prescribed period, the zoning board's order was not tolled by the filing of the petition. *French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).*

Although the practice of the District had been to accept the view of the Corporation Counsel (now Attorney General) that the filing of a petition for review operated to stay the effect of an agency order, the plain language of this section did not permit such a tolling. *French v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 658 A.2d 1023 (1995).*

APPLIED in *Vestry of Grace Parish v. District of Columbia Alcoholic Beverage Control Board, App. D.C., 366 A.2d 1110, 1976 D.C. App. LEXIS 426* (Dec. 1, 1976); *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com., App. D.C., 368 A.2d 1143, 1977 D.C. App. LEXIS 413* (Feb. 1, 1977); *Coakley v. Police & Firemen's Retirement & Relief Board, App. D.C., 370 A.2d 1345, 1977 D.C. App. LEXIS 434* (Mar. 9, 1977); *Kober v. District Unemployment Compensation Board, App. D.C., 384 A.2d 633, 1978 D.C. App. LEXIS 447* (Mar. 17, 1978); *Carpenter v. District Unemployment Compensation Board, App. D.C., 409 A.2d 175, 1979 D.C. App. LEXIS 491* (Nov. 13, 1979); *Seabolt v. Police & Firemen's Retirement & Relief Board, App. D.C., 413 A.2d 908, 1980 D.C. App. LEXIS 266* (Mar. 25, 1980); *Neer v. District of Columbia Police & Firemen's Retirement & Relief Board, App. D.C., 415 A.2d 523, 1980 D.C. App. LEXIS 295* (May 15, 1980); *Dunhill v. Director, Dist. of Columbia Dep't of Transp., App. D.C., 416 A.2d 244, 1980 D.C. App. LEXIS 317* (June 11, 1980); *Le Jimmy, Inc. v. District of Columbia Alcoholic Beverage Control Bd., App. D.C., 433 A.2d 1090, 1981 D.C. App. LEXIS 327 (1981); Williams v. Barry, 708 F.2d 789, 1983 U.S. App. LEXIS 27110* (D.C. Cir. June 3, 1983); *Bealer v. District of Columbia Rental Housing Com., App. D.C., 472 A.2d 901, 1984 D.C. App. LEXIS 324 (1984); Donnelly Associates v. District of Columbia Historic Preservation Review Bd., App. D.C., 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987); Snipes v. District of Columbia Dep't of Employment Services, App. D.C., 542 A.2d 832, 1988 D.C. App. LEXIS 87 (1988); District of Columbia Metropolitan Police Dep't v. Broadus, App. D.C., 560 A.2d 501, 1989 D.C. App. LEXIS 111 (1989); King v. District of Columbia Dep't of Empl. Servs., App. D.C., 560 A.2d 1067, 1989 D.C. App. LEXIS 123 (1989); Mason v. District of Columbia Dep't of Employment Services, App. D.C., 562 A.2d 644, 1989 D.C. App. LEXIS 152 (1989); Murray v. District of Columbia, Bd. of Zoning Adjustment, App. D.C., 572 A.2d 1055, 1990 D.C. App. LEXIS 79 (1990); Regional Constr. Co. v. District of Columbia Dep't of Employment Services, App. D.C., 600 A.2d 1077, 1991 D.C. App. LEXIS 339 (1991),* writ of certiorari denied by *505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873, 1992 U.S. LEXIS 3767, 60 U.S.L.W. 3858 (1992); King v. D.C. Water & Sewer Auth., 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002); Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002); Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003); Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd., 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004); Sodexho Marriott Corp. v. D.C. Dep't of Empl. Servs., 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004); Rife v. D.C. Police & Firefighters' Ret. & Relief Bd., 940 A.2d 964, 2007 D.C. App. LEXIS 704 (2007); Basken v. D.C. Bd. of Zoning Adjustment, 946 A.2d 356, 2008 D.C. App. LEXIS 215 (2008); Takahashi v. D.C. Dep't of Human Servs., 952 A.2d 869, 2008 D.C. App. LEXIS 243 (2008).*

CITED in *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs, App. D.C., 646 A.2d 984 (1994); Joel Truitt Management, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 646 A.2d 1007 (1994); Kingsley v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 657 A.2d 1141 (1995); Watergate E., Inc. v. Public Serv. Comm'n, App. D.C., 665 A.2d 943 (1995); Tri-County Indus. v. District of*

Columbia, 932 F. Supp. 4 (D.D.C. 1996); Walton v. District of Columbia, App. D.C., 670 A.2d 1346 (1996); In re McLain, App. D.C., 671 A.2d 951 (1996); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Olson v. District of Columbia Dep't of Emp. Servs., App. D.C., 736 A.2d 1032 (1999); Jewell v. District of Columbia Police & Firefighters Retirement & Relief Bd., App. D.C., 738 A.2d 1228 (1999); Miller v. D.C. Bd. of Zoning Adjustment, 948 A.2d 571, 2008 D.C. App. LEXIS 249 (2008).